

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 218 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BANABEN, WIDOW OF JOHAN MOSEF FERNANDIS DESOZA

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 09/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

The petitioner challenges the order of preventive
detention dated 14th November, 1998, made by the
Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order. As many as three offences punishable under the Bombay Prohibition Act are registered against the petitioner during the year 1998. In each of the said cases, the petitioner was found to be in possession of substantial quantity of country liquor. Besides, two persons, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on the public tranquility and the even tempo of life.

The only ground on which the impugned order of detention has been challenged is the reports of the chemical examination of the liquor alleged to have been seized from the possession of the petitioner have not been furnished to the petitioner. It is submitted that on 7th December, 1998, a representation was made to the Home Minister and copies of the reports of the chemical examination were requested for. Inspite of the said request, the reports were not furnished to the petitioner. The petitioner is thus deprived of his Constitutional right to make an effective representation. It is argued that while forming the subjective satisfaction, the Detaining Authority has not relied upon the reports of the chemical examination and the same were, therefore, not required to be furnished to the petitioner. In the matter of RANVIRSINH KALYANSINH (SPECIAL CIVIL APPLICATION NO. 7490/98, decided on 12th July 1999), I have taken a view that the reports of the chemical examination are vital documents which may affect the subjective satisfaction of the Detaining Authority. The same, therefore, are required to be furnished to the detenu irrespective of the fact whether the same are relied upon by the Detaining Authority or not. In the present case, it is not disputed that the reports of the chemical examination were not furnished to the petitioner along with the grounds of detention. It is also not the case of the respondents that on the date of detention, such reports were not available to the Detaining Authority. In above view of the matter, it is required to be held that the petitioner's right to make an effective representation has been infringed. The continued detention of the petitioner is, therefore, invalid and illegal.

Petition is, therefore, allowed. The order dated 14th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI